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*S.Y.R.*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/380,211 11/08/99 SIMMONS

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EXAMINER

KIDWELL, M

ART UNIT

PAPER NUMBER

3761

*#9*

DATE MAILED:

12/12/00

Please find below and/or attached an Office communication concerning this application proceeding.

Commissioner of Patents and Trad marks

# Office Action Summary

Applicati n No.

09/380,211

Applicant(s)

SIMMONS ET AL.

Examiner

Michele M. Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 November 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 7-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 November 1999 is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.

- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Information Disclosure Statement*

The information disclosure statement filed July 28, 2000 fails to comply with 37 CFR 1.98(a)(1), which requires **a list** of all patents, publications, or other information submitted for consideration by the Office. It has been placed in the application file, but the information referred to therein has not been considered.

Additionally, three references Francheschi (FR 2 636 837 A1), Amino et al (US 5,413,610) and Masse (EP 0 666 069 A1) have been submitted with the information disclosure statement submitted November 22, 1999. These references have not been listed on the form PTO 1449. Further, these references relate to artificial hip joints. It is not clear how these references relate to the present application and the Examiner is unsure if these references have been intentionally submitted for consideration in light of the present application. Accordingly, these references have been placed in the application file, but the information referred to therein has not been considered.

### *Drawings*

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description:

- Reference character 6
- Reference character 8
- Reference character 11

Correction is required.

### ***Specification***

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

The following order or arrangement is preferred in framing the specification and, except for the reference to "Microfiche Appendix" and the drawings, each of the lettered items should appear in upper case, without underlining or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) Title of the Invention.
- (b) Cross-References to Related Applications.
- (c) Statement Regarding Federally Sponsored Research or Development.
- (d) Reference to a "Microfiche Appendix" (see 37 CFR 1.96).
- (e) Background of the Invention.
  - 1. Field of the Invention.
  - 2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) Brief Summary of the Invention.
- (g) Brief Description of the Several Views of the Drawing(s).
- (h) Detailed Description of the Invention.
- (i) Claim or Claims (commencing on a separate sheet).
- (j) Abstract of the Disclosure (commencing on a separate sheet).
- (k) Drawings.
- (l) Sequence Listing (see 37 CFR 1.821-1.825).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7 – 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the following limitations:

- "the wearer" in lines 4, 5, 13, 15 – 16, 18 and 23 – 24
- "the center line" in line 8
- "the wearer's body" in line 17
- "the anus and the urethra orifice" in line 18
- "the abutment surface" in line 23
- "the wetting angle" in line 25
- "the liquid" in line 26
- "the skin" in line 26

There is insufficient antecedent basis for this limitation in the claim.

Additionally, claim 7 refers to sealing edges in line 20 of the claim. However, the applicant further limits the claim to "said sealing edge" in line 23. A sealing edge has not been established. It is unclear what sealing edge the applicant is referring to and what the applicant intends to claim as an invention. ✓ Further, the applicant has claimed a non-adhesive sealing medium which "at least partly fills out any through-penetrating pores...". A through-penetrating pore has not been defined. ✓ Since a pore is an opening, it could be reasonably implied that the opening would thoroughly penetrate the surface that the opening is located on. However, if there is another type of pore which the applicant intends to claim, that structure should be defined. Likewise, the language

Art Unit: 3761

"partly fills" has not been defined. Even further, it is unclear how the wearer of the article can have a surface and what constitutes an abutment surface on the wearer.

Regarding claim 8, the language "partly fills" has not been defined. It is unclear as to what the applicant intends to claim as an invention. Additionally, claim 8 refers to the use of the sealing medium in an amount sufficient to fill out said pores. However, the first limitation (designated by numeral 1) of claim 7, does not require the inclusion or pores.

With respect to claims 9 – 12, it is unclear how the sealing medium can be defined as corresponding to or to simply be an amount. This language is vague and indefinite.

With reference to claims 13 – 15, it is unclear how the sealing medium can have a wetting angle. The sealing medium may comprise a wetting angle that measures above a certain degree, but the sealing medium cannot just be a wetting angle.

Claim 16 recites the limitation "the rheological properties" in line 2, and "the skin of the wearer" in lines 4 – 5. There is insufficient antecedent basis for these limitations in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 7 – 12 and 16 – 17, as best understood by the Examiner, are rejected under 35 U.S.C. 102(e) as being anticipated by Schulte et al. (US 6,156,024).

Regarding claim 7, Schulte et al. (hereinafter referred to as Schulte) discloses an absorbent article with longitudinally extending side extremities (20), an absorbent body (44) disposed between a liquid-impermeable bottom sheet (42) and a liquid-permeable upper sheet (38) having at least one longitudinally extending elastic liquid barrier (62) of essentially liquid-impervious material (col. 11, lines 28 – 31) being fastened to the upper or bottom sheet along or adjacent a side extremity (figure 4) having a free sealing edge (66).

With reference to claim 8, Schulte teaches the article wherein the sealing edges are coated with a sealing medium as set forth in the abstract. The applicant has provided independent claim 7 in the alternative form that allows either of the embodiments to meet the limitation of the claim. Claim 8 refers to the use of the sealing medium in an amount sufficient to fill out said pores. However, the first limitation (designated by numeral 1) of claim 7, does not require the inclusion or pores. Therefore, it is not clear as to what is intended to be the scope of the claim.

As to claims 9 – 12, Schulte discloses an article with the sealing medium applied in the claimed amounts as set forth in col. 25, lines 40 – 45.

With respect to claim 16, Schulte teaches the article wherein the sealing medium is essentially rigid and viscous at room temperature and sufficiently fluid at body temperature to smear the skin of the wearer as set forth in col. 15, line 38 to col. 16, line 3.

As to claim 17, Schulte discloses the sealing medium to be petrolatum as set forth in col. 17, lines 13 – 26.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13 – 15, as best understood by the Examiner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulte et al. (US 6,156,024).

With reference to claims 13 – 15, the applicant has disclosed on page 14 of the specification that petrolatum is a suitable sealing medium. Schulte discloses the use of petrolatum in col. 17, lines 13 – 26. It can be reasonably assumed that the petrolatum would provide a sealing member meeting the wetting angle requirements of the claimed invention. Likewise, it would be obvious that the petrolatum would provide results similar to any other sealing member disclosed by the applicant, since the applicant has acknowledged that petrolatum is a suitable ointment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele M. Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday thru Friday, 7:00am - 3:30pm.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Monica Graves, Patent Analyst, whose telephone number is 703-305-3002.

Michele Kidwell  
December 7, 2000



**DENNIS RUHL**  
**PRIMARY EXAMINER**